

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>IN RE:</b>	§	
	§	
<b>CHRISTOPHER M. COLBERT</b>	§	<b>CASE NO. 07-34178-H3-7</b>
<b>Debtor</b>	§	<b>(Chapter 7)</b>
	§	

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**Trustee's Motion to Void Judgment Lien of  
Nova Information Systems, Inc.**

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**This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 20 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.**

**Represented parties should act through their attorney.**

**TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:**

Rodney Tow, Trustee, files this Motion to Void Judgment Lien of Nova Information Systems, Inc., and in support thereof would show this Court as follows:

**History and Background**

1. On June 25, 2007, the Debtor filed a Voluntary Petition under Chapter 7 of Title 11 of the United States Code.
2. Rodney Tow was appointed Trustee, qualified, and continues to act in that capacity.

3. On September 2, 2007, the Trustee filed an Objection to the Debtor's Exemptions [Docket No. 25]. The Debtor was attempting to exempt as his homestead property located at 2301 Colgate Circle, College Station, Texas, "the Colgate Property"). The Debtor admitted that he had not lived in the property for the past 6 years and that his father was using the property as rental property. Further, the Debtor had not claimed the Colgate Property as exempt in three prior bankruptcies.
4. On October 10, 2007, this Court entered an Agreed Order Resolving Trustee's Objection to Exemption, [Docket No. 42], whereby the Debtor agreed that the Colgate Property was not his homestead and was property of the Estate.
5. On November 21, 2007, the Trustee filed a Motion to Sell the Colgate Property Free and Clear of all Liens, Claims and Encumbrances, [Docket No. 59].
6. On January 16, 2008, this Court entered an Order Approving Sale Free and Clear of all Liens, Claims and Encumbrances, [Docket No. 68]. The Order approved the sale of the Colgate Property to Gustavo and Maria Roman for \$108,000.00.
7. Prior to the closing the title report revealed that there were several lis pendens and/or judgment liens against the Colgate Property, none of which the Debtor had listed on his Schedules or Statement of Financial Affairs.
8. On February 13, 2008, the Trustee filed an Amended Motion to Sell Free and Clear of all Liens, Claims and Encumbrances, [Docket No. 70], to obtain Court permission to complete the sale as there would not be any return to unsecured creditors due to the liens against the property.
9. On February 21, 2008, this Court entered a second Order Approving Sale Free and Clear

of all Liens, Claims and Encumbrances, [Docket No. 76], under the same terms and conditions as the prior Order.

10. The sale ultimately closed, the Trustee paid the mortgage holder and placed the remainder of the funds into the Estate.

**Motion to Void Lien**

11. On January 13, 2005, Nova Information Systems, Inc. filed an Abstract of Judgment in Brazos County, Texas, in the judgment amount of \$43,835.17, and attorney's fees in the amount of \$14,611.72, ("the Nova Abstract"). A true and correct copy of the Nova Abstract is attached hereto as Exhibit "A".
12. Under Texas law, the mere rendition of a judgment does not automatically create a lien in favor of the prevailing party.<sup>1</sup> Rather, in order to acquire a judgment lien on real property owned by the judgment debtor, the judgment creditor must obtain an abstract of judgment complying with the statutory mechanisms provided under Tex. Prop. Code Ann. §52.001 - 52.043 (Vernon 1995 and Supp. 2005).
13. Pursuant to Section 52.003(a) of the Texas Property Code, an abstract of judgment must contain the following:
  - (1) the names of the plaintiff and defendant;
  - (2) the birthdate of the defendant, if available to the clerk or justice;
  - (3) the last three numbers of the driver's license of the defendant, if available;
  - (4) the last three numbers of the social security number of the defendant, if available;
  - (5) the number of the suit in which the judgment was rendered;
  - (6) the defendant's address, or if the address is not shown in the suit, the nature of citation and the date and place of service of citation;
  - (7) the date on which the judgment was rendered;
  - (8) the amount for which the judgment was rendered;
  - (9) the amount of the balance due, if any, for child support arrearage; and,

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<sup>1</sup> *Burton Lingo Co. v. Warren*, 45 S.W.2d 750, 751-752 (Tex. Civ. App. – Eastland 1931, writ ref'd).

- (10) the rate of interest specified in the judgment.<sup>2</sup>
14. In addition, a judgment creditor must ensure that the clerk has properly recorded the abstract in the county real property records.<sup>3</sup>
15. Because a judgment lien is created by statute, substantial compliance with the statutory requirements is mandatory before a judgment creditor's lien will attach. It is well settled in Texas that it is the judgment creditor's responsibility to assure that the Clerk abstracts the judgment properly. Since a judgment lien is statutorily created, substantial compliance with the statutory requirement is *mandatory* before a judgment creditor's lien will attach.<sup>4</sup> The purpose of the recorded and indexed abstract of judgment is to provide notice to subsequent purchasers of the existence of the judgment and the lien. When properly recorded and indexed, an abstract of judgment creates a judgment lien that is superior to the rights of subsequent purchasers and lienholders.<sup>5</sup>
16. In the instant case, the Nova Abstract is deficient for the following reasons:
- a. It fails to set forth the birthdate of the defendant or state that it is not available as required under Tex. Prop. Code Ann. §52.003(a)(2).
  - b. It fails to set forth the last three numbers of the driver's license of the defendant or state that it is not available as required under Tex. Prop. Code Ann.

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<sup>2</sup> Texas Property Code Annotated Section 52.003(a) (Vernon 1995).

<sup>3</sup> Tex.Prop.Code Ann. §52.004 (Vernon Supp. 2005)

<sup>4</sup> *In re Herman*, 315 B.R. 399, 407 (E.D.Tex. 2004), citing *Citicorp Real Estate v. Banque of Arabe Internationale d'Investissement*, 747 S.W.2d 926, 928 - 930 (Tex. App. – Dallas 1988 writ denied); *Hoffman, McBryde & Co, P.C. v. Heyland*, 74 S.W.3d 906, 909 (Tex. App. – Dallas 2002) *appeal after remand*, 2004 WL 1626543 (Tex. App. – Dallas 2004, no pet.)

<sup>5</sup> *Id.*

§52.003(a)(3).

- c. It fails to set forth the last three numbers of the social security number of the defendant or state that it is not available as required under Tex. Prop.Code Ann.

§52.003(a)(4).; and,

- d. It fails to set forth the amount of the balance due, if any, for child support arrearage as required under Tex. Prop.Code Ann. §52.003(a)(9).

17. Therefore, this Court should void the Nova Abstract and the lien created therein for its failure to comply with the provisions of §52.003(a)(2), (3), (4) & (9) of the Texas Property Code.

18. Nova Information Systems, Inc. should only be allowed an unsecured claim in this Estate in the amount of \$58,446.89.

19. The Trustee would submit that the Nova abstract of judgment is void it fails to provide the information required under §52.003(a)(2), (3), (4) & (9).

Respectfully submitted this 12<sup>th</sup> day of November, 2008.

**TOW & KOENIG, PLLC.**

By: /s/ Julie M. Koenig  
Julie M. Koenig  
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The Woodlands, Texas 77380  
281/681-9100 (Telephone)  
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Attorneys for the Trustee

**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing has been served by Nicole Oakley, a legal assistant in my office, on all of the parties listed below and on the attached service list either by ECF notification or by first class mail, proper postage affixed, on the 12<sup>th</sup> day of November, 2008.

/s/ Julie M. Koenig  
Julie M. Koenig

Hull & Associates  
6200 Savoy, Ste. 440  
Houston, Texas 77036

Label Matrix for local noticing  
0541-4  
Case 07-34178  
Southern District of Texas  
Houston  
Thu Nov 13 12:15:29 CST 2008

C-Bar Enterprises, Inc.  
11683 FM 2549  
Bryan, TX 77808-3999

4  
United States Bankruptcy Court  
PO Box 61288  
Houston, TX 77208-1288

3s Relo Trans Llc  
C/o Josh Benn  
1021 University Dr E # 102  
college station, TX 77840-2185

Allen R Hodgkins Iii  
C/o Kenneth R Williams  
405 S Ferdinand St  
Baton Rouge, LA 70802

Amanda Colbert  
2408 Shelby Oak Ln  
Austin, TX 78748-5236

Apex Title  
4996 Highway 6 North  
Houston, TX 77084-6905

Apollo Answering service  
Po Box 70919  
Houston, TX 77270-0919

At&t Wireless  
Po ox 8229  
Aurora, IL 60572-8229

Atmos Energy  
PO Box 650205  
Dallas, TX 75265-0205

Atmos Energy  
Po Box 78108  
Phoenix, AZ 85062-8108

Attorney Jack Dillard  
Po BOX192  
Bryan, TX 77806-0192

Best Publications  
2616 South Loop West # 300  
Houston, TX 77054-2672

Brian - Deanna Cameron  
1511 S. Texas Ave. #219  
College Station, TX 77840

Bryan Texas Utilities  
Po Box 1000  
Bryan, TX 77805-1000

Budget Truck Rental  
PO Box 403962  
Atlanta, GA 30384-3962

C Bar Enterprises  
2909 West Highway 21  
Bryan, TX 77803-1238

Charles Lee  
1423 North woodland Avenue  
Tucson, Az 85712-4142

Chase Bank  
41915 Independence  
Tampa, FL 33634

Citicapital commercial Corp  
4650 Regent Blvd  
Ste 200  
Irving, TX 75063-2481

Collectx Inc  
2101 west Ben white Blvd  
Austin, TX 78704-7516

College station utilities  
utilities Dept  
Po Box 10230  
College Station, TX 77842-0230

Cox Communications  
Po Box 139004  
Tyler, TX 75713-9004

David & Thuy Flosser  
8910 Six Rivers Lane  
Missouri City, TX 77459-6923

EMC Mortgage  
Po Box 141358  
909 Hidden Ridge Dr # 200  
Irving, TX 75038-3826

Easton Press  
c/o universal Fidelity Lp  
Po Box 941911  
Houston, TX 77094-8911

Enterprise Truck Rental  
12230 old Hempstead Rd.  
Houston, TX. 77092

Excel Landscaping  
739 Garden Acres Blvd  
Bryan, TX 77802-4006

First American Bank  
701 Harvey Rd  
college Station, TX 77840-3546

First Premier Bank  
Po Box 5147  
Sioux Falls, SD 57117-5147

First credit services, Inc  
one woodbridge center Ste 410  
woodbridge, N7 07095-1151

Gas Tec  
1522 S Texas Ave  
Bryan, TX 77802-1015

Geico Insurance  
Geico Plaza  
Bethesda, MD 20810-0001

George M Cotton  
435 Louisiana Ave  
Baton Rouge, LA 70802-5820

Gexa Energy  
Po Box 659410  
San Antonio, Tx 78265-9410

Golds Gym  
125 E John carpenter Frwy  
# 1300  
Irving, TX 75062-2366

Harris County Steel & Plumbing, Inc.  
P. O. Box 218312  
Houston, TX 77218-8312

(p)INTERNAL REVENUE SERVICE  
CENTRALIZED INSOLVENCY OPERATIONS  
PO BOX 21126  
PHILADELPHIA PA 19114-0326

JACK COLBERT  
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ROCKDALE TX 76567-4323

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college station, Tx 77840-1975

Jay GOSS  
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Baton Rouge, LA 70802

Kco Enterprises DbA Mr check c  
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Houston, TX 77084-1304

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LVNV Funding LLC its successors and assigns  
assignee of Washington Mutual  
Resurgent Capital Services  
PO Box 10587  
Greenville, SC 29603-0587

Lisa white Watkins  
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Houston, TX 77046-2486

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Auburn, AL 36830-4277

Midland Credit management  
5775 Roscoe Court  
San Diego, CA 92123-1356

Modern method Gunita  
3334 Brownie Campbell Road  
houston, TX 77086-1508

NCO Financial Systems  
Po Box 15740  
willmington, DE 19850-5740

National Auto Finance  
PO Box 7100  
Little Rock, AR 72223-7100

National van Lines  
2800 Roosevelt Rd  
Broadview, IL 60155-3771

Nationwide Insurance  
world Headquarters  
one Nationwide Plaza  
Columbus, OH. 43215-2220

Netspend Corporation  
Po Box 2136  
Austin, Tx 78768-2136

Nga Group, Inc.  
20 Timber Ridge Road  
North Brunswick, NJ 08902-5515

Nova information systems Inc  
C/o Hull & Associates Pc  
6200 Savoy Ste 440  
Houston, TX 77036-3324

Paymentech merchant services  
6010 Balcones Drive  
First Floor  
Austin, TX 78731-4270

Payne, Watson, Miller, Maliche  
Po Box 6900  
Bryan, TX 77805-6900

Pebble creek owners ASSo  
4500 Pebble Creek Parkway  
college station, TX 77845-8942



Penske Truck Leasing Co. Llp Po Box 7429 Pasadena, CA 91109-7429	PHU DO 1818 Cross Spring Drive sugar Land, TX 77479-6968	Portfolio Recovery Associates, LLC. PO Box 12914 NORFOLK VA 23541-0914
Premier Bankcard/Charter P.O. Box 2208 Vacaville, CA 95696-8208	Providian Po Box 660548 Dallas, TX 75266-0548	Retail Merchant Association 902 Avenue J Lubbock, TX 79401-2719
Robin Eby 3415 serene Grove San Antonio, TX 78247-2948	Sherman Acquisitions Llc Portfolio Recovery Associates Po Box 12914 Norfolk, VA 23541-0914	Solomon & Solomon GTE Southwest Columbia circle Box 15019 Albany, NY. 12212-5019
Spiegel Po Box 9204 old Bethpage, NY 11804-9004	Trailer Rents 8222 North Freeway Houston, TX 77037-3608	Tx Dot 125 E 11th st Austin, TX 78701-2409
US Trustee Office of the US Trustee 515 Rusk Ave Ste 3516 Houston, TX 77002-2604	Uhaul International C/o NCO Financial systems Po Box 15740 Wilmington, DE 19850-5740	Usaa 9800 Fredricksburg Rd San Antonio, TX 78288-0002
Usaa Auto & Property Insurance Po Box 659464 San Antonio, TX 78265-9464	Verizon 1135 E Chocolate Ave Hershey, PA 17033-1292	Verizon Southwest Inc AFNI/Verizon 404 Brock Dr Bloomington,IL 61701-2654
World Savings Attn: Bankruptcy Dept. P O Box 659558 San Antonio, TX 78265-9558	Yellow Book Pacific c/o RMS Bankruptcy Recovery Services P O Box 5126 Timonium, Maryland 21094-5126	capital one Bank Deposit Recovery Dept. PO Box 152409 Irving, TX 75015-2409
consolidated communications 121 S 17th Street Mattoon, IL 61938-3987	credit Protections 1355 Noel Road suite 2100 Dallas, TX 75240	southwestern Bell Yellow Pages C/o Watkins & Watkins 24 Greenway Plaza #1210 Houston, TX 77046-2486
southwestern Bell Yellow Pages Po Box 630052 Dallas, TX 75263-0052	sudden Link communication PO Box 9037 Addison, TX. 75001-9037	universal Fidelity LP Attn John Jackson Po Box 941911 Houston, TX 77094-8911
wells Fargo Bank 3000 Briarcrest Drive Bryan, TX 77802-3054	wells Fargo Banking services Po Box 14415 Des Moines, IA 50306-3415	world savings 4101 Wiseman Blvd San Antonio, TX 78251-4201

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Tow and Koenig PLLC  
26219 Oak Ridge Drive  
The Woodlands, TX 77380-1960

William G West CPA  
12345 Jones Rd Ste 120  
Houston, TX 77070-4958

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Irs  
Po Box 24017  
Fresno, CA 93779

(d)Irs  
Po Box 24017  
Fresno, CA 93799

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Mr. Payroll

(u)Austin  
Last name unknown

(d)C Bar Enterprises  
11683 Fm 2549  
Bryan, TX 77808-3999

(d)Harris county steel & Plumbing  
Po Box 218312  
Houston, TX 77218-8312

(d)Providian  
Po Box 660548  
Dallas, Tx 75266-0548

(u)Laura Patterson  
Lone Star Realty

End of Label Matrix  
Mailable recipients 93  
Bypassed recipients 6  
Total 99